IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MARTHA CHALONER and WILLIAM CHALONER, wife and husband, Plaintiffs/Appellants, v. L & C CONSTRUCTION, an Arizona sole proprietorship, Defendant/Appellee.	2 CA-CV 2006-0120 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20023558

Honorable Deborah Bernini, Judge

AFFIRMED

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V Á S Q U E Z, Judge.

¶1 In this personal injury action, appellant Martha Chaloner appeals from the jury verdict in favor of appellee L & C Construction (L & C). The sole issue on appeal is whether the trial court erred in admitting testimony by a city plumbing inspector that the wall-mounted sink that fell on Chaloner, causing her injuries, had been properly installed in accordance with the approved blueprints and the city plumbing code. Chaloner argues the testimony was not relevant to the standard of care. For the reasons discussed below, we affirm.

Facts and Procedural Background

¶2 "We view the evidence and reasonable inferences therefrom in the light most favorable to upholding the jury's verdict." *Acuna v. Kroack*, 212 Ariz. 104, ¶ 3, 128 P.3d 221, 223 (App. 2006). On August 31, 2001, Chaloner was injured in a restroom at a medical office building when a wall-mounted sink fell from the wall. Chaloner filed a personal injury lawsuit naming as defendants the medical office; the owner of the office building; the property management company; and L & C, the contractor who had installed the sink. Eventually, all defendants were dismissed from the lawsuit except the contractor, L & C.

¶3 Chaloner alleged that L & C had negligently installed the sink because it had failed to use anchor bolts as required by the manufacturer's specifications. Chaloner moved in limine to preclude the testimony of Trinidad Valencia, a city plumbing inspector, on the condition of the sink at the time of installation and whether the sink had been properly

installed according to the city plumbing code. Chaloner argued "plumbing codes have no bearing on proper installation of the sink" and the inspections "occurred two years before the accident and have no probative value as to the condition of the sink on the date of the accident." The trial court disagreed, finding the testimony had "some relevance."

¶4 At trial, Valencia testified that he had examined the sink in question during its installation. He described his physical inspection of the sink, which included "jiggl[ing]" the sink slightly to ensure it was firmly attached to the wall but not inspecting it for the presence of anchor bolts. He stated that, on his final inspection, the installation met the minimum plumbing code standards, but he did not check the installation's compliance with the manufacturer's specifications because they were not included on the blueprint. He also testified that compliance with the plumbing code does not require meeting manufacturer's specifications unless they are specifically included on the blueprint. The jury unanimously found in favor of L & C. Chaloner filed this timely appeal.

Discussion

¶5 Chaloner argues the trial court committed reversible error in admitting Valencia's testimony, claiming it was irrelevant under Rule 401, Ariz. R. Evid., 17A A.R.S., and, even if relevant, it should have been excluded pursuant to Rule 403, Ariz. R. Evid., 17A A.R.S. We review a trial court's admission of evidence for "a clear abuse of its discretion and resulting prejudice." *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 928-29 (App. 2005). A trial court cannot be said to have abused

its discretion unless its ruling is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Id., quoting Quigley v. Tucson City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982).

¶6 Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401. To be relevant, evidence does not have to prove or disprove the existence of a consequential fact, but it must "alter the probability" of that fact's existence. *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 496, 733 P.2d 1073, 1079 (1987).

¶7 Chaloner's relevancy argument is based on her belief that it is "[t]he manufacturer's specifications, not the City of Tucson standards . . . at issue" in this case. According to Chaloner, the trial court erred in admitting Valencia's testimony because he "proffered no testimony that assisted the jury in determining whether [L & C] met the standard of care, i.e., installing according to the manufacturer's specifications which required using the anchor screws [to mount the sink]." We do not agree that the manufacturer's specifications constitute the standard of care in determining Chaloner's negligence claim against L & C.

¶8 There are four elements to a negligence claim: "(1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard; (3) a causal connection between the defendant's conduct and the resulting injury;

and (4) actual damages." *Gipson v. Kasey*, 214 Ariz. 141, ¶ 9, 150 P.3d 228, 230 (2007). L & C does not dispute that it had a duty to properly install the sink, that the sink's collapse caused Chaloner's injury, or that she suffered damages as a result. The only disputed issue below and on appeal is whether L & C's conduct fell below the standard of care and constituted a breach of its duty.

¶9 A duty is an "'obligation, recognized by law, which requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm.'" *Id.* ¶ 10, *quoting Markowitz v. Ariz. Parks Bd.*, 146 Ariz. 352, 354, 706 P.2d 364, 366 (1985). In contrast, "[t]he standard of care is defined as '"[w]hat the defendant must do, or must not do . . . to satisfy the duty."'" *Id.*, *quoting Coburn v. City of Tucson*, 143 Ariz. 50, 52, 691 P.2d 1078, 1080 (1984), *quoting* W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 53, at 356 (5th ed. 1984).

¶10 Chaloner has not cited us any authority for the proposition that a heightened or specialized standard of care should apply in this case. *See Rudolph v. Ariz. B.A.S.S. Fed'n*, 182 Ariz. 622, 626, 898 P.2d 1000, 1004 (App. 1995). Nor do we think one does. "[T]his case is more akin to an ordinary negligence action than one involving a professional defendant, such as a health care provider, for which specialized standards of care apply." *Id.* That L & C did not use anchor bolts in installing the sink may be relevant to whether it failed to meet the standard of care and breached its duty, but the manufacturer's

specifications themselves are not the standard of care to which L & C's conduct must conform.

¶11 This is an ordinary negligence action, and the standard of care is that of a "reasonably prudent person or entity under the circumstances." *Id.; see also Johnson v. Pankratz*, 196 Ariz. 621, ¶ 18, 2 P.3d 1266, 1270 (App. 2000). Thus, in the context of this case, it was for the jury to determine, based on all the evidence, not just the manufacturer's specifications, but whether L & C's installation of the sink was reasonably prudent under the circumstances. *See Hutto v. Francisco*, 210 Ariz. 88, ¶ 23, 107 P.3d 934, 938 (App. 2005) (jury decides whether duty has been breached).

¶12 Because the applicable standard of care is that of a reasonably prudent contractor, relevant evidence includes any evidence tending to make it more or less likely that a reasonable and prudent contractor would have installed the sink in the same manner L & C installed it under the circumstances. *See Hawkins*, 152 Ariz. at 496, 733 P.2d at 1079; *see also* Ariz. R. Evid. 401. At trial, Chaloner argued the standard of care required the use of anchor bolts. But Valencia testified the sink had been firmly attached to the wall. He further testified that its installation, although he did not inspect for the presence of anchor bolts, complied with all relevant blueprints, permits, and plumbing codes and passed the city's inspection. Valencia's testimony was relevant to whether L & C's installation of the sink met the standard of care and whether the standard required the use of anchor bolts,

as Chaloner asserts. His testimony, therefore, "relate[d] to a consequential fact." *Hawkins*, 152 Ariz. at 496, 733 P.2d at 1079; *see also* Ariz R. Evid. 401.

¶13 Chaloner nonetheless argues that Valencia's testimony was irrelevant because it concerned events that were too remote in time from when the accident occurred. But Chaloner overlooks the fact that the basis of her claim is that L & C was negligent in failing to properly install the sink. She did not allege L & C had a continuing duty to inspect the sink during the intervening period between its installation and the date of her injury. Therefore, the facts concerning how the sink had actually been installed were unquestionably relevant.

¶14 Chaloner next argues that even if the testimony was relevant, it was still inadmissible under Rule 403, Ariz. R. Evid., because "its prejudice to [her] substantially outweighed its probative value." Rule 403 provides that relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." We review a trial court's Rule 403 ruling for an abuse of discretion. *State v. Fernane*, 185 Ariz. 222, 226, 914 P.2d 1314, 1318 (App. 1995).

¶15 Chaloner contends Valencia's testimony misled and confused the jury because he "only inspected for minimal City of Tucson standards," and he approved the sink installation "without having knowledge of what the manufacturer required for 'proper' installation." She asserts the city standards were an unrelated, collateral issue and

Valencia's testimony improperly led the jury to believe that satisfaction of the city standards satisfied the standard of care. Chaloner's argument rests upon her mistaken belief that the manufacturer's specifications alone constitute the standard of care. But we have rejected that argument above. Contrary to Chaloner's argument, Valencia's testimony was directly related to an issue in dispute and not an extraneous issue that might have confused the jury.

¶16 Furthermore, the testimony was not misleading. Valencia explained to the jury the limited nature of the plumbing inspection and the requirements of the city plumbing code. He candidly admitted on cross-examination that he was not aware of the manufacturer's specifications and did not conduct an extensive investigation of the sink's attachment to the wall. At no time did he state or imply that L & C had followed the manufacturer's specifications or that the city plumbing code alone formed the requisite standard of care. The trial court did not abuse its discretion in finding the testimony's probative value outweighed the potential for confusion of the issues or misleading the jury. *See* Ariz. R. Evid. 403.

¶17 Finally, Chaloner argues that she was unfairly prejudiced by Valencia's testimony because it led the jury to decide the case on an improper basis. She contends "[j]urors tend to look differently upon government officials than lay witnesses[, and t]he jurors thus unfairly gave [Valencia's] testimony . . . greater weight than is proper." She relies on *Henry v. HealthPartners of Southern Arizona*, 203 Ariz. 393, ¶ 18, 55 P.3d 87, 92-93 (App. 2002), *quoting State v. Mott*, 187 Ariz. 536, 545, 931 P.2d 1046, 1055 (1997),

for the proposition that "[a] party suffers prejudice when a jury bases its decision 'on an improper basis.'" Chaloner's reliance on *Henry* is misplaced.

¶18 In *Henry*, we noted that relevant evidence will usually have an adverse, prejudicial effect on the opposing party, but such evidence is only inadmissible under Rule 403 if it has an "'undue tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror.'" 203 Ariz. 393, ¶ 18, 55 P.3d at 92-93, *quoting Mott*, 187 Ariz. at 545, 931 P.2d at 1055. Thus, we concluded: "Although Henry was undoubtedly prejudiced by the trial court's reading of the allegations [in her complaint alleging negligence of someone other than the defendant], we cannot say that the jury was encouraged by that reading to decide the case on the basis of emotion, sympathy, or horror." *Id*. The same is true in this case.

¶19 Valencia's testimony certainly could have had an adverse effect on Chaloner's assertion that the manufacturer's specifications constituted the standard of care, but it was not the sort of testimony that appeals to a jury's passions and leads to a decision on the basis of emotion, sympathy, or horror. *See Haynes v. Syntek Fin. Corp.*, 184 Ariz. 332, 340, 909 P.2d 399, 407 (App. 1995); *see also State v. Schurz*, 176 Ariz. 46, 52, 859 P.2d 156, 162 (1993). And, the trial court did not err in finding the testimony more probative than prejudicial and admitting it.

Disposition

¶20 We affirm the judgment of the trial court.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge